RECORD AND BRIEF

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No. 16-466

IN THE

Supreme Court of the United States

BRISTOL-MYERS SQUIBB COMPANY,

Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO *et al.*,

Respondent.

On Writ of Certiorari
to the California Supreme Court

BRIEF OF RESPONDENTS

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QUESTION PRESENTED

Does the Due Process Clause categorically forbid a state from providing a forum for litigation against a non-resident defendant brought by resident and non-resident plaintiffs who assert identical claims arising from the defendant's uniform conduct?

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INTRODUCTION

This case presents the recurring question of when the Due Process Clause forbids a state court from providing a forum to adjudicate claims against a non-resident. The context here is litigation against a defendant that engaged in a uniform, nationwide course of conduct—conduct that, predictably, caused its alleged harms in several states. In other words, the defendant is alleged to have done *one* wrong thing (or set of wrong things), and to have directed that common conduct at individuals in different forums around the country in violation of the same legal standards. In such cases, residents of multiple states regularly bring suit together to resolve all their claims efficiently. The state courts have long adjudicated such claims without controversy. Petitioner's argument is that this practice has actually always been unconstitutional, although no one ever realized it. According to petitioner, no out-of-state plaintiff can join a California case properly brought against it by California plaintiffs—no matter how *related* their claims may be—unless petitioner's contacts with California themselves caused that particular plaintiff's injury.

In this case, petitioner developed the prescription drug Plavix, which it distributed and sold through a uniform, nationwide campaign. Consumers of Plavix from multiple states allege that same conduct injured them in the same way. They joined together to pursue their identical claims in combined cases brought in California state court.

As petitioner acknowledges, the "complaints are materially identical," Br. 4 n.1, drawing no distinction between the residents and non-residents in two key respects. *See* J.A. 20-74. [1] First, petitioner's claims concern the same underlying conduct, so they all rest on one set of operative facts. Second, although the plaintiffs' claims may formally be governed by different states' laws, the relevant legal standards are the same.

California, moreover, will not materially increase the litigation burden on petitioner by providing a forum for all the claims; indeed, the reverse is true. Petitioner inevitably will appear in the forum as a defendant (on the residents' claims), Pet. App. 92a, 95a n.2, and will therefore provide all the same fact discovery regarding its uniform nationwide marketing, manufacturing, and distribution of Plavix, while developing and pressing all the same legal arguments in its defense.

Litigating the cases together will also be far more efficient for the judiciary. That is so because the California courts already have jurisdiction to adjudicate claims brought by the resident *and* non-resident plaintiffs respecting the same core issues of fact and law. Because petitioner's co-defendant McKesson—which distributed Plavix nationally—is subject to general jurisdiction in California, the

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[1] Like petitioner (at 4 n.1), respondents use "residency" as a shorthand for the location where the plaintiff was injured.

California courts will adjudicate even the *non*-residents' identical claims with respect to at least McKesson. In these circumstances, the most efficient means to resolve these cases, *by far*, is together in a common forum.

On petitioner's view, however, the Due Process Clause somehow prohibits the states from providing that common forum for the joint adjudication of identical, multi-state claims against an out-of-state defendant's conduct. Even where, as here, (i) the forum's exercise of jurisdiction is completely fair and reasonable, (ii) the State has substantial interests in entering a complete judgment regarding the defendant's conduct and in collaborating with its sister states to provide for the efficient resolution of identical claims, and (iii) centralizing the litigation substantially furthers the interests of the judiciary generally, the State must exclude the intimately related claims of non-resident plaintiffs under petitioner's bright-line "causation" test.

Such a tortuous and illogical procedural rule would be a surprising result for the *Due Process* Clause. Accordingly, this Court's precedents unsurprisingly reject petitioner's sweeping, ahistorical, and atextual reading of the Fourteenth Amendment. Once a defendant's operative conduct is properly subject to the specific jurisdiction of a court in a given case, nothing in the Constitution or our "traditional notions of fair play and substantial justice" can be read to categorically displace the State's authority to adjudicate the legality of that conduct, in that case, for both residents and non-residents alike. In fact, these kinds of complex,

multi-party cases have been common in state courts for decades, have been validated in on-point precedents of this Court, and rest on doctrines essential to making complex civil litigation possible and efficient in both the state and federal courts. Conversely, it is hard to even estimate how much damage petitioner's brand-new, bright-line rule would cause, because it is so contrary to accepted analysis *and* the assumptions under which this Court has substantially changed the law of corporate general jurisdiction in recent years. This Court should affirm.

STATEMENT

I. Background

This case involves product liability suits brought jointly in California state court by plaintiffs who were injured—many in California, others elsewhere—by a uniform, nationwide scheme for the manufacture, marketing, and distribution of Plavix. Petitioner Bristol-Myers Squibb (BMS) manufactures, markets, and sells Plavix throughout the United States. Pet. App. 2a-3a. Plavix limits blood clotting, ostensibly minimizing the occurrence of clot-related problems like heart attacks and strokes. But although petitioner's nationwide marketing push promoted Plavix as "providing greater cardiovascular benefits, while being safer and easier on a person's stomach than aspirin," patients in fact risked serious side effects, such as "heart attack, stroke, internal bleeding, blood disorder[s] or death," with little-to-no marginal benefit. *Id.* 3a-4a.

Petitioner is incorporated in Delaware and headquartered in New York. *Id.* 4a-5a. But it also has substantial operations in California, including five offices that employ approximately 160 people and perform drug research and development. *Id.* Petitioner employs approximately 250 sales representatives in California, has a government advocacy office in Sacramento, has been registered with the California Secretary of State to conduct business there since 1936, and maintains a registered agent for service of process. *Id.*

Petitioner does not distribute Plavix alone. Rather, it contracted to give a substantial role in the national distribution of Plavix to McKesson Corporation (McKesson), which has its principal place of business in California. *Id.* 4a-5a; 133a n.18. By its own description, "McKesson is the central nervous system of health care," https://goo.gl/eK1DAo, and its pharmaceutical distribution business "supplies branded, generic and over-the-counter pharmaceuticals to more than 40,000 customers spanning retail chains, independent retail pharmacies and institutional providers," https://goo.gl/RHSSUY. During the relevant period, approximately 25% of petitioner's *global* gross revenue was attributable to McKesson-related sales. *See, e.g.*, Bristol Myers Squibb Co., Form 10-K (Feb. 17, 2012).

Petitioner conducted an ambitious, nationwide, direct-to-consumer marketing campaign for Plavix, touting its benefits for various diseases. Pet. App. 28a, 95a. That marketing was not location-specific; it circulated the same materials throughout the United

States. *Id.* 27a-28a. And it was a massive success. Plavix was either the highest or second-highest revenue drug in the nation from 2008-2011. [2] Petitioner sold over 180 million Plavix pills in California alone from 2006-2012, generating sales revenue of $918 million. *Id.* 4a-5a.

II. Procedural History

1. In multiple complaints filed in California's Superior Court, a total of 86 California residents and 592 non-residents sued petitioner and McKesson for Plavix-related injuries. *Id.* 2a-4a. The complaints allege the same operative facts and legal claims without regard to the plaintiffs' residency—as petitioner concedes, all their "complaints are materially identical," Br. 4 n.1, and assert identical causes of action (mostly, common-law torts). Pet. App. 2a-4a. These uniform claims all derive from petitioner's common, nationwide conduct related to the design, development, manufacture, testing, marketing, and labeling of Plavix throughout the United States. *Id.*[3]

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[2] *See Top Medicines by Non-Discounted Spending (U.S.)*, IMS HEALTH (approximately $14 billion in U.S. Plavix sales between 2008 and 2012), http://www.imshealth.com/files/-web/Corporate/News/Top-Line%-20Market%20Data/US_Top_Meds_Non-Discounted_Spending_2012.pdf.

[3] Contrary to petitioner's suggestion (at 5), the bulk of the complaints' causes of action are *not* California statutory claims. The complaints do contain a few claims that cite the California

Petitioner removed the litigation to federal court on two grounds. First, it argued that there was diversity jurisdiction because McKesson had been fraudulently joined. The district court rejected that argument, finding that (contrary to petitioner's suggestion, which it repeats here, Br. 6), the plaintiffs had adequately "alleged that their damages arose from their use of Plavix distributed by McKesson." *Caouette v. Bristol-Myers Squibb*, No. 12-1814, at 8 (N.D. Cal. Aug. 10, 2012) (ECF No. 35).

Second, petitioner argued that the plaintiffs' separate complaints were properly viewed as one aggregate action. On that view, although no individual complaint was subject to removal under the Class Action Fairness Act (CAFA)—because each involved fewer than 100 total plaintiffs—they together would cross that numerical threshold for a CAFA "mass action." The core of petitioner's argument was that "the Court should aggregate the cases because the plaintiffs ... *have essentially brought the same case*." *Id.* at 11 (emphasis added). The district court did not doubt that premise, but found it legally insufficient to support removal under CAFA's plain text, which provides that "'the term 'mass action' shall not include any civil action in which ... the claims are joined upon motion of a

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code, but these theories merely duplicate the predominant and nearly identical common-law claims. *See* J.A. 47-72.

defendant.'" *Id.* at 11-12 (quoting 28 U.S.C. §1332(d)(11)(B)(ii)(II)).

Upon remand, the actions were coordinated together as a single body of litigation in San Francisco. Petitioner then moved to quash service on the claims of the non-resident plaintiffs (respondents here). Petitioner argued that respondents had failed to establish personal jurisdiction because they did not allege that they purchased or ingested Plavix in California. Pet. App. 1a-2a.

The Superior Court disagreed, concluding that petitioner's extensive California activities sufficed to create general jurisdiction. *Id.* 5a-6a. Petitioner then petitioned the Court of Appeal for a writ of mandate. There, petitioner admitted its hope that, if jurisdiction were defeated, "a lot of those cases aren't going to get filed." Oral Argument at 23:00, *Bristol-Myers Squibb Co. v. Superior Ct.*, 175 Cal. Rptr. 3d 412 (Cal. App. 2014). As the court put it, petitioner's counsel "candidly acknowledged that if each of the [plaintiffs] is required to refile in his or her home state ... fewer cases will be filed against BMS." Pet. App. 139a n.20. Noting that "BMS's due process rights do not include discouraging plaintiffs who may or may not have meritorious claims from pursuing them in an appropriate forum," the court ultimately held that California had specific personal jurisdiction

over petitioner with respect to the non-residents' claims. *Id.* 114a-44a.[4]

2. The Supreme Court of California affirmed. *Id.* 44a-45a. Though cases of similar scale had previously proceeded under general jurisdiction in California, the court found that *Daimler* foreclosed it, because petitioner was generally "at home" only in Delaware (where it was incorporated), and New York or New Jersey (where it has its principal operations). *Id.* 16a-19a. Although the court recognized that "the company's ongoing activities in California are substantial," it concluded that they fell short of establishing general jurisdiction in California, which would have allowed petitioner to "be sued in California on any cause of action, whether or not related to its activities here." *Id.* 17a.

Noting, however, that this Court in *Daimler* had expressly preserved the "viability and breadth of [its] preexisting specific jurisdiction jurisprudence," the California Supreme Court focused its analysis there. *Id.* 20a-44a. It began by identifying the three elements of the specific-jurisdiction inquiry: "(1) whether the defendant has purposefully directed its activities at the forum state," "(2) whether the plaintiff's claims arise out of or are related to these forum-directed activities," and "(3) whether the

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[4] The Court of Appeal initially affirmed the general-jurisdiction holding, but reached specific jurisdiction on remand from the California Supreme Court after *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014). Pet. App. 5a-6a.

exercise of jurisdiction is reasonable and does not offend traditional notions of fair play and substantial justice." *Id.* 21a. It then proceeded to carefully consider each element in turn, despite petitioner's express recognition that it was "not contesting the first or third factors," and instead "contesting only whether the claims of the nonresident plaintiffs are related to its activities in California." *Id.* 21a n.2.

The court first held that there was "no question that BMS ha[d] purposefully availed itself of the privilege of conducting activities in California." *Id.* 24a. It explained that "[n]ot only did BMS market and advertise Plavix in this state, it employs sales representatives in California, contracted with a California-based pharmaceutical distributor, operates research and laboratory facilities in this state, and even has an office in the state capital to lobby the state on the company's behalf." *Id.* 24a-25a.

The court next concluded that respondents' claims were closely "related to" petitioner's California contacts. *Id.* 25a-35a. Petitioner did not dispute that the claims of the in-state plaintiffs met any version of the relatedness requirement. *Id.* 25a-29a. Further, petitioner admitted that *all* the claims—by in-state *and* out-of-state residents—arose from petitioner's "common nationwide course of distribution;" petitioner hadn't even "asserted that either the product itself or the representations it made about [it] differed from state to state." *Id.* 28a. Thus, "BMS's nationwide marketing, promotion, and distribution of Plavix created a substantial nexus between the nonresident plaintiffs' claims and the

company's contacts in California regarding Plavix." *Id.*

The court rejected petitioner's contrary argument that the residents and non-residents merely asserted "parallel" claims. *Id.* 29a-30a. Although petitioner "contend[ed] that the nonresident plaintiffs' contacts would be exactly the same if BMS had no contact whatsoever with California," this argument "ignore[d] the uncontested facts." *Id.* The key was that "[t]he claims are based not on 'similar' conduct ... but instead on a *single*, coordinated, nationwide course of conduct," directed, in substantial part, into California. *Id.* 29a-30a (emphasis added).

Finally, although petitioner did not even dispute that asserting specific personal jurisdiction over the joint litigation would "comport with 'traditional notions of fair play and substantial justice,'" *id.* 35a-36a (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)), the court carefully considered the issue and found jurisdiction fair and reasonable under the circumstances. *Id.* 35a-44a. It concluded that requiring petitioner to defend both resident and non-resident claims in one forum would not be more burdensome than petitioner's alterative of addressing them in a "scattershot manner" in multiple states. *Id.* 37a-38a. The court also explained that the State had an interest in both adjudicating the conduct of McKesson and providing a forum for non-resident plaintiffs when information associated with their claims was plainly relevant to the related claims of its own citizens. *Id.* 38a-41a. Given the State's legitimate interest in the litigation as a whole, the absence of any substantial, marginal burden on

petitioner, and the benefits to the judicial process of litigating these claims together, the Court found personal jurisdiction appropriate in California. *Id.* 44a-45a.

4. Three Justices dissented. The dissent recognized that petitioner "contests neither the first prong" (purposeful availment) "nor the third" prong (reasonableness) of the specific-jurisdiction analysis. *Id.* 46a-86a (Werdegar, J., dissenting). But it nonetheless rejected the majority's holding—*not* by endorsing petitioner's causation test, which it found inconsistent with governing precedent, *id.* 68a, but because it disagreed about the characterization of the non-residents' claims. The dissent viewed them as "merely parallel" to the residents', and thus insufficiently connected to petitioner's California contacts. *Id.* 46a-51a.

This Court granted certiorari.

SUMMARY OF THE ARGUMENT

This brief proceeds in four parts.

Part I explains that, in language and practice, this Court's consistent test for specific personal jurisdiction has never required that a defendant's forum contacts "give rise to" every claim in a case. Instead, it requires that the claims be "related to" those contacts, often—in multi-party or multi-claim cases—because they arise from the same "suit-related conduct," the defendant directs, in part, into the forum. *See, e.g.*, *Walden v. Fiore*, 134 S. Ct. 1115, 1122 (2014); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 780 (1984). There are thus multiple unanimous precedents irreconcilable with petitioner's

new causation test. Whether considered from the perspective of a state's lawful authority or fairness to the defendant, petitioner's test is theoretically unsound, achieves nothing the doctrine doesn't already cover, is inconsistent with everyday practices in civil litigation, and deprives states of authority they exercised from the Founding and well through the Fourteenth Amendment's enactment.

Part II explains that petitioner's test will also have serious negative consequences for the judiciary. It will throw doubt on traditional state cases, needlessly multiply litigation, and undermine settled doctrines of federal jurisdiction as well. Indeed, those practices and the federal statutes that support them are unconstitutional if assertions of judicial authority must be analyzed on petitioner's claim-by-claim and party-by-party approach. Still other federal statutes will become constitutionally dubious too.

Part III applies the correct test to the facts of this case. It explains that respondents' claims are "related to" petitioner's California contacts because they arise from the same common core of relevant conduct already subject to California's adjudicative power. And despite petitioner's concession, Part III walks through why personal jurisdiction over this entire litigation is fair and reasonable in California, so as to highlight the many reasons why personal jurisdiction in this case does not imply that every case about conduct causing nationwide injuries can be freely forum-shopped to any court at all.

Part IV closes by addressing errors in petitioner's remaining arguments. These include its selective quotations from certain cases, its confusion of personal-jurisdiction issues with choice-of-law concerns, and its mistaken conflation of this case with an assertion of general jurisdiction.

ARGUMENT

At the outset, understanding this case requires bearing three key points in mind.

First, this case concerns only one third of the test for specific personal jurisdiction. Even where the "defendant *himself*" creates the necessary "minimum contacts" with a forum by (1) purposefully directing his (2) "suit-related conduct" there, *Walden*, 134 S. Ct. at 1122, personal jurisdiction over the litigation must (3) still be fair and reasonable in that State. Petitioner has conceded the third, core aspect of the inquiry (along with the first), but that concession should not obscure its key doctrinal role. As the California court explained, Pet. App. 35a-36a, petitioner frequently presses here issues that are properly analyzed through the "reasonableness" inquiry it conceded. Those issues are thus fully addressed already by the doctrine without any need for petitioner's new "causation" test.

Second, an important point should be made about how that overall "reasonableness" inquiry properly relates to the sliding-scale approach of the California Supreme Court. As this Court has said, where the fairness factors strongly tilt in favor of allowing a suit in a given forum, it may "sometimes serve to establish the reasonableness of jurisdiction

upon a lesser showing of minimum contacts than would otherwise be required." *Burger King v. Rudzewicz*, 471 U.S. 462, 477 (1985). Moreover, where a defendant purposefully creates lots of forum contacts, it will tend to make that forum's jurisdiction more fair and reasonable. It is thus natural to say that, where a defendant has lots of forum contacts, the connection between those contacts and the suit need not be as close.

But that is not exactly right. Even extensive, purposeful contacts that fail to meet the "at home" test for *general* jurisdiction under *Daimler* and *Goodyear Dunlop Tire Operations S.A. v. Brown*, 564 U.S. 915 (2011), can never justify *specific* jurisdiction unless a minimum, required relationship exists between those contacts and the controversy at issue in the case—no matter how reasonable the litigation might otherwise be. If the California Supreme Court's sliding-scale standard permitted specific jurisdiction over a claim *not* "related to" or "connected with" a defendant's forum-touching conduct, that would be incorrect. But that is not remotely what happened here, and the better reading of California's standard is one that simply echoes this Court's decision in *Burger King*, not one that permits specific jurisdiction to slide into general, all-purpose jurisdiction just because the defendant has extensive forum connections. *See* Pet. App. 20a-22a.

Third, that said, it is hard to fully capture the breadth of the settled practices petitioner's rule will upset precisely because, until recently, cases of this scale regularly and uncontroversially proceeded without distinguishing between specific and general

jurisdiction. Before the "pathmarking" decisions in *Goodyear* and *Daimler*—for 65 of the 70 years petitioner looks to for precedents, *see* Br. 11, and long before that, *see infra* at 33-34—it was understood that a corporate defendant that (like petitioner) did massive business in a state was subject to its general jurisdiction. *See, e.g.*, *Daimler*, 134 S. Ct. at 751 & n.18 (discussing abrogation of "doing business" standard). Critically, when this Court recently narrowed the scope of general jurisdiction over corporations, it did so in express reliance on how an expansive and flexible understanding of specific jurisdiction would fill the gap, *see id.* at 757-58 & n.10, just as *International Shoe* and its progeny did when they altered the territorial regime from *Pennoyer v. Neff*, 95 U.S. 714 (1878). *See Burnham v. Superior Ct. of Cal.*, 495 U.S. 604, 616-22 (1990) (discussing shift). Petitioner nonetheless seeks to layer on top of those general-jurisdiction holdings a new, strict limitation on specific jurisdiction, upsetting the careful balance they struck. This threatens not only "deep injustice," *Daimler*, 134 S. Ct. at 757-58 & n.10, but a rash of unintended consequences, as lower courts struggle to figure out which kinds of traditional cases that have survived well under *International Shoe*'s flexible inquiry—including vexing but now-resolved line-drawing problems in sensitive areas like family law, *see, e.g.*, *Kulko v. Superior Ct. of Cal.*, 436 U.S. 84, 92 (1978)—will weather petitioner's new storm.

The overarching point is that petitioner has zoomed in on a narrow slice of a much broader doctrine, overlooking the tools already available to

address its policy concerns, and ignoring the doctrine's many moving parts. The flexible requirement that the litigation "relate to" or be "connected with" the defendant's forum contacts is as old as *International Shoe* itself, has been consistently articulated for 70 years, has never required petitioner's causal relationship, and (contrary to petitioner's suggestion) *has* supported specific jurisdiction over non-forum injury claims arising from a non-forum defendant's out-of-state conduct. *See infra* at 23-28. The consequences of now altering that test, especially in light of *Goodyear* and *Daimler*, are hard even to fathom—though they will run deep. The Court should adhere to its settled test.

I. Specific Jurisdiction Attaches To Litigation That Either "Arises From *Or* Relates To" A Defendant's Contacts With The Forum, So Long As It Is Reasonable Under The Circumstances.

Under this Court's precedents, a state's power to provide a forum to adjudicate claims arising from a non-resident's conduct extends only to litigation that is (among other things) "related to" or "connected with" the defendant's forum contacts. By its terms and in practice, that test does not require that the defendant's forum contacts themselves *cause* every injury at issue in the case. Rather, "the defendant's *suit-related conduct* must create a substantial connection with the forum State." *Walden*, 134 S. Ct. at 1121 (emphasis added). As explained below, in the case of litigation by both resident and non-resident plaintiffs, *this* aspect of the due-process inquiry

requires only that the claims challenge a common course of conduct—based on a common set of operative legal theories and facts—that the defendant directed, in part, into the forum.

1. We begin with the Court's own consistent language for the relevant inquiry. In every case, this Court's personal-jurisdiction test has used near-identical variants on the same classic formulation, expressly framed in the alternative: The courts' assertion of specific jurisdiction must be "in a suit arising out of or related to the defendant's contacts with the forum." *Helicopteros Nacionales De Colom., S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984) (quoted in, *e.g.*, *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 881 (2011) (plurality)).

In ordinary usage, "related to" is "deliberately expansive" language, "conspicuous for its breadth." *See Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383-84 (1992) (collecting cases). It indicates only that two things must be connected. *See* BLACK'S LAW DICTIONARY 1158 (5th ed. 1979) (defining "relating to" as "to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with"). Particularly when read in the context of this Court's personal jurisdiction precedents, "related to" *contrasts* with "arises from," precisely because only the latter connotes a causative link. Thus, the apparent reason this Court has included the broader phrase "related to" in its decisions time and again is to draw that contrast and avoid the creation of a bright-line, causal test. That, in turn, preserves the power of state courts to address cases in which some of the claims may be

"associated with" or "connected with" defendants' forum contacts, even if not all of the claims arise directly therefrom.

Beginning with the seminal decision in *International Shoe*, this Court has, accordingly, elaborated on the "relatedness" element of specific jurisdiction in expansive and accommodating terms that are irreconcilable with a categorical causation requirement. "In contrast to general, all-purpose jurisdiction, specific jurisdiction is confined to adjudication of issues deriving from, *or connected with*, the very controversy that establishes jurisdiction." *Goodyear*, 564 U.S. at 919 (emphasis added); *Int'l Shoe*, 326 U.S. at 319 (providing that disputes at issue must be ones that "arise out of or are *connected with* the activities within the state" (emphasis added)); *Nicastro*, 564 U.S. at 881 (plurality) (quoting same language).

Relatedly, this Court has always required a connection between the "litigation" or the "suit" and the defendant's forum contacts; no case has required that *every claim* that is properly part of a single case be analyzed independently. *See, e.g.*, *Walden*, 134 S. Ct. at 1115 ("[S]pecific jurisdiction over a nonresident defendant focuses on the relationship among the defendant, the forum, and *the litigation*." (emphasis added)); *Keeton*, 465 U.S. at 775 (same); *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977) (same). Remarkably, in the two crucial passages where petitioner's brief suggests that the analysis is claim-by-claim or plaintiff-by-plaintiff (at 13, 49-50), it cites no case saying anything of the sort.

In combination with the other aspects of the inquiry, this Court's broad language supports a simple and well-recognized formulation for the breadth of a forum's specific personal jurisdiction over a case or controversy: Assuming a defendant has (1) purposefully directed its activities at the forum and (2) asserting personal jurisdiction is otherwise fair and reasonable, the forum may extend its jurisdiction over the defendant "confined to adjudication of 'issues deriving from, or connected with, the very controversy that establishes jurisdiction.'" *Goodyear*, 564 U.S. at 919 (quoting Von Mehren & Trautman, Jurisdiction to Adjudicate: A Suggested Analysis, 79 HARV. L. REV. 1121, 1136 (1966)). Put otherwise, when a defendant submits certain conduct to the adjudicatory power of a state by directing that conduct into both that forum *and others*, the state can hale the defendant, adjudicate that conduct, and determine any claims or issues "connected with [that] controversy" in deciding the case before it—as long as it is otherwise fair and reasonable to do so. *Id.*; *Keeton*, 465 U.S. at 774-75.

2. Petitioner's principal justification for cabining specific personal jurisdiction far more narrowly rests on the premise that the due-process inquiry "is in the first instance a question of authority rather than of fairness." *Nicastro*, 564 U.S. at 883 (plurality); *see also* Br. 25-27 (discussing, first, "territorial limitations on state power"). From that premise, petitioner reasons that the states lack authority to adjudicate *any* claims that do not arise from the defendant's contacts with their territory. *Id.* 26. But whether one focuses on fairness to the defendant or

the authority of the state courts, petitioner's argument goes nowhere. In fact, focusing on authority helps to isolate the problems in petitioner's argument, because it is clear from numerous precedents—both directly on point and closely analogous—that courts *do* have authority to adjudicate claims that are closely "related to" those over which it has power as part of a single case, even if they might lack power over those claims analyzed on their own. This Court's precedents simply do not require a causal connection between a defendant's forum contacts and every claim of injury the court adjudicates in a case, and for good reason.

a. Initially, all agree that a State's authority to exercise specific personal jurisdiction over certain conduct by a non-resident defendant comes from the relationship between that conduct and the defendant's forum contacts. At least when the defendant intentionally directs that conduct into the state and it causes injury there, the state clearly has the authority to adjudicate the lawfulness of that conduct—whether it occurred in the state or not. *Calder v. Jones*, 465 U.S. 783, 788-89 (1984); *Keeton*, 465 U.S. at 780. As the *Nicastro* plurality explained, the defendant "submits to the judicial power of an otherwise foreign sovereign to the extent that power is exercised *in connection with* the defendant's activities *touching* on the State." 564 U.S. at 881 (emphases added). In other words, when a defendant purposefully touches a State with its activities, it gives that State the power to adjudicate a litigation about those activities—the power to determine if they were lawful or not. That power necessarily includes

the ancillary authority to determine all claims and issues directly "connected with" those activities—whether they concern in-state injuries or not, *Goodyear*, 564 U.S. at 919—assuming, again, that jurisdiction is otherwise reasonable.

Requiring only this non-causal "connection" makes sense because the defendant's submission of the relevant, out-of-state conduct to the "judicial power" of a state does not mean the state exercises any *regulatory* or legislative power over that out-of-state behavior. The existence of specific jurisdiction does not mean the forum-state's *law* applies: A state court might apply federal law, the law of the state where the injury happened, or the law of the state where most of the operative facts occurred. *See, e.g.*, *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 816-22 (1985) (permitting Kansas courts to adjudicate claims of out-of-state plaintiffs even while requiring them to choose non-Kansas law for those plaintiffs' claims). Instead, the state court merely provides a forum to adjudicate the same claim that would otherwise be litigated by the same plaintiff against the same defendant, because the forum can adjudicate (and already is adjudicating) closely related claims against the defendant brought by those injured within the state by the same operative conduct. *Keeton*, 465 U.S. at 777-80.

From a fairness perspective, the burdens imposed by such litigation on the non-resident defendant are minimal, given the "connection" required between the litigation and the defendant's forum contacts. That requirement imposes genuine constraints. A sufficient "connection" exists only

where the forum is one to which the defendant has *already* submitted the relevant conduct because it directed that conduct there and harmed forum residents. Accordingly, the defendant is not being subjected to the burden of appearing anywhere it has not already purposefully created an obligation to defend itself regarding the same core issues.

Further, because the forum's power extends only to "issues ... connected with[] the very controversy that establishes jurisdiction," *Goodyear*, 564 U.S. at 919, the forum cannot force the defendant to provide discovery, generate new and different legal defenses, or suffer any other litigation burdens not already associated with the issues germane to the in-forum plaintiffs' claims. The required "connection" thus exists only where the claims of the non-forum residents track those of the residents on both the operative facts and relevant law. The upshot is that the defendant faces no greater burden—and generally a much lesser one—than it would if every plaintiff instead exercised its right to sue in her own home state.

b. Not only is such joint litigation perfectly natural as a matter of both state authority and procedural fairness, it has also been explicitly approved by this Court's precedents. This Court has squarely rejected petitioner's essential argument that a state court categorically lacks the sovereign authority to adjudicate together claims for injuries arising in multiple states from the same identical conduct occurring outside the forum—*i.e.*, claims that do *not* "arise from" defendant's forum contacts.

The state courts' settled power in this regard is illustrated by two opinions for the Court by then-Chief Justice Rehnquist. Neither generated any dissent. And both were decided contemporaneously with several of this Court's seminal decisions addressing specific jurisdiction. *See, e.g.*, *Burger King*, 471 U.S. 462; *Helicopteros*, 466 U.S. 408; *Calder*, 465 U.S. 783; *Keeton*, 465 U.S. 770. Surprisingly, neither petitioner nor the Solicitor General discusses—much less tries to distinguish—either one.

In the first, *Keeton*, a non-resident plaintiff filed suit in New Hampshire against a non-resident publisher (Hustler). 465 U.S. at 772. The plaintiff alleged that Hustler's magazine defamed her not merely in New Hampshire (where relatively few copies were distributed) but in each of the fifty states where copies were sold. She thus sought damages in New Hampshire for her claims regarding her injuries incurred in every other state. The defendant urged this Court to hold that New Hampshire's assertion of specific jurisdiction over injuries allegedly caused and suffered in other states violated the Due Process Clause. This Court said no. *See id.* at 772-74.[5]

Preliminarily, the plaintiff argued that no due-process issue even arose because her suit asserted

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[5] *Keeton* was a federal-court case but was analyzed like a state-court suit because personal jurisdiction was predicated on New Hampshire's long-arm statute. *Id.* at 774.

only a single New Hampshire cause of action, which under the "single publication rule" permitted the plaintiff to recover the damages she incurred in every state. This Court rejected that argument and instead agreed with the defendant that the "contacts between respondent and the forum must be judged in light of [her multi-state] claim, rather than a claim only for damages sustained in New Hampshire." *Id.* at 775.

In nonetheless finding specific jurisdiction over the entire litigation, the Court necessarily rejected the argument that there must be a causal relationship between the defendant's forum contacts and the plaintiff's out-of-state injuries. Nothing Hustler did in New Hampshire had any causal relationship with injuries suffered elsewhere; instead, just as here, all the injuries in New Hampshire and elsewhere arose from the common out-of-state cause. *Id.* at 780. And yet this Court held that the state courts could assert specific jurisdiction where, just as here, a case concerning nationwide conduct, and seeking redress for nationwide injuries, "arises out of the very activity being conducted, *in part*, in [the forum]." *Id.* (emphasis added). That holding decides this case.

Accordingly, at a pivotal point in its brief—where petitioner undertakes to prove that "no case" has ever permitted a state court to resolve claims not causally related to the defendant's forum contacts, Br. 17—petitioner carefully omits the words "in part" from its quotation of *Keeton*, implying that *all* the claims there "'*ar[o]s[e] out of* the very activity being conducted' in the State." Br. 19 (petitioner's alterations). This dramatically distorts *Keeton*'s core

holding, which petitioner (and the government) nowhere discuss.

Notably, even after this Court determined in *Keeton* that the regular sale of the defamatory issues of Hustler in New Hampshire sufficed to create the requisite "minimum contacts" for all the nationwide claims of injury, it recognized that this was not the end of the inquiry. Instead, this Court held that for the litigation to be consistent with due process, "the contacts between [the defendant] and New Hampshire must be such that it is 'fair' to compel [it] to defend a multistate lawsuit in New Hampshire seeking nationwide damages for all copies of the [magazine] issues in question, even though only a small portion of those copies were distributed in New Hampshire." *Id.* at 775. Performing that separate analysis, this Court concluded that the foreign defendant could fairly be haled to New Hampshire with respect to its distribution of the magazine in other states because it "produces a national publication aimed at a nationwide audience," such that "[t]here is no unfairness in calling it to answer for the contents of that publication wherever a substantial number of copies are regularly sold and distributed." *Id.* at 781. That was so "even though the bulk of the harm done to petitioner occurred outside New Hampshire," *id.* at 780, and that forum *alone* had a limitations period that had not yet run out on the plaintiff, *id.* at 778-79.

Importantly, the Court reasoned not only that the assertion of jurisdiction over all the claims would "protect defendants from harassment resulting from multiple suits," but also that the states themselves

have "a substantial interest in cooperating with other States ... to provide a forum for efficiently litigating all issues and damages claims" together in a single forum. *Id.* at 777. Among other things, that "reduces the potential serious drain [of the litigation] on judicial resources" in multiple state courts. *Id.* "In sum, the combination of [the forum's] interest in redressing injuries that occur within the State and its interest in cooperating with other States in the application of the 'single publication rule' demonstrates the propriety of requiring respondent to answer to a multistate libel action in New Hampshire." *Id.* at 777-78.

The very next year, this Court reaffirmed that the Due Process Clause preserves the state courts' important role in resolving multi-state litigation—including claims that arise outside the forum. In *Shutts*, the defendant (Phillips), was a Delaware corporation with its principal place of business in Oklahoma. 472 U.S. at 799. A class of royalty owners from many different states filed suit in Kansas over allegedly delayed payments on natural gas Phillips produced or purchased from "leased land located in 11 different States." *Id.* Little of the relevant conduct and resulting injury occurred in Kansas. *Id.* Phillips thus argued that the class action violated due process under *International Shoe* because the Kansas state court was asserting personal jurisdiction over the claims of non-resident plaintiffs whose injuries arose outside the forum. On its view, because there was "no prelitigation contact with many of the plaintiffs and leases involved,"

Kansas could not adjudicate those plaintiffs' claims for want of "minimum contacts." *See id.* at 807-08.

This Court, again, unanimously said no. Instead, it held that, although the Kansas court could not apply substantive Kansas *law* to claims not arising from Phillips's conduct in the state, it could provide a forum to *adjudicate* those claims. *Id.* at 823. That is a foundational holding of modern complex litigation: Not one Justice disagreed, and it has been the basis on which state courts have adjudicated innumerable multi-state class actions for more than thirty years.

Shutts is flatly irreconcilable with petitioner's argument, particularly when it comes to the "lawful authority" of state courts. *Nicastro*, 564 U.S. at 887. *Shutts* squarely held that the state court had the power to adjudicate a claim arising from conduct occurring entirely outside the forum and that caused the plaintiffs' injuries entirely outside the forum. The Court instead assessed the reasonableness of the litigation as a whole, without taking a claim-by-claim, causation-only approach to the relatedness inquiry.[6]

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[6] To be sure, *Shutts* found specific jurisdiction was fairly asserted over the non-resident plaintiffs; it did not expressly address fairness to the non-resident defendant. *See* 472 U.S. at 809-11. But particularly because fairness to the defendant is even less disputed here than it was in *Shutts*, the relevant point is that *Shutts* recognized the state court's *authority* over "the absent class members *and their claims against petitioner*." *Id.* (emphasis added). It would also be absurd to believe that

3. Beyond these two unanimous precedents, petitioner's argument is also irreconcilable with this Court's cases governing other, highly analogous areas of law.

a. Begin with the countless, everyday situations in which adjudicating the entire controversy between two parties requires a court to decide multiple claims concerning the same common core of operative, out-of-forum conduct that causes injuries in more than one state. (One frequent example involves multi-state claims of copyright or trademark infringement, *e.g.*, *Chloe v. Queen Bee of Beverly Hills, LLC*, 616 F.3d 158 (2d Cir. 2010)). According to petitioner, any controversy between two large companies involving harms arising in more than one state must almost invariably be brought in the defendant's home state (under general jurisdiction). If the defendant is an international firm, there may be no court at all where such claims can be adjudicated together. Br. 50. Not only would this make even the most basic of complex civil cases brutally inefficient, it also lacks any justification as a matter of fairness or state-court authority. Because the parties are already litigating about that same core conduct, neither can claim to be procedurally prejudiced by efficiently deciding the multi-state claims together. And because the state court is already exercising the power to determine

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Shutts would have reached the exact opposite result if the petitioner had only invoked its *own* due-process rights, rather than those of the non-resident plaintiffs.

the legal consequence of those operative facts, it is perfectly natural for it to determine that question wherever the conduct already subject to its judicial power has caused harm in the same way, governed by the same legal standard.

To see this, imagine a case in which a Nevada company alleges that another Nevada company's manufacturing negligence in Nevada caused the defendant not to deliver goods in California and Nevada, injuring the plaintiff's business in those states. A California court plainly has specific jurisdiction over a claim for the California damages. And few if any would doubt that the California court also has specific jurisdiction over the closely related claim for the Nevada damages that arose from the exact same negligence. *See, e.g.*, 6 Wright & Miller, Fed. Prac. & Proc. §1478 (approving of amendments adding claims in such circumstances without further regard to personal jurisdiction, and collecting cases); *infra* at 31. Both claims arise from the same core of operative facts; the state court adjudicates the lawfulness of the exact same out-of-state conduct in both scenarios.

On petitioner's conception of the power of state courts, however, this ordinary and utterly efficient litigation is suddenly impossible: The California court already has specific jurisdiction over the plaintiff, defendant, and negligent conduct at issue, but cannot touch the injury that happened in Nevada, because it was not caused by the defendant's California contacts. From the standpoint of judicial authority, this makes no sense whatsoever—the California court's determination about the allegedly

negligent conduct already has binding force as between these two parties in any other suit through a core application of (mutual) collateral estoppel. *See, e.g.*, *Blonder-Tongue Labs., Inc. v. Univ. of Ill. Found.*, 402 U.S. 313, 320-21 (1971).

For this reason, the leading civil procedure treatise repeatedly recognizes that, when it comes to the various procedures through which parties may ask courts to jointly adjudicate multiple claims, the sensible approach to personal jurisdiction is to rely on the same "relatedness" rule that allows these claims to be brought together in the first place—they must arise from "the same common nucleus of operative facts." *See* Wright & Miller, §1478 (approving of personal jurisdiction over an added claim on the basis of the existing case "when the original and added claims are sufficiently related to bring them within the test for applying supplemental jurisdiction"); *id.* §1588 (same for joinder, and articulating supplemental-jurisdiction test). That is true for amendments that add claims to existing cases, *id.* §1478, certain cross-claims or compulsory counterclaims by existing parties, *id.* §§1416, 1433, and joinder procedures, *id.* §§1445, 1588. For each, the treatise explains that personal jurisdiction is appropriate because, for the joint litigation of the claims to be appropriate in the first place, they must already be "so related" that parties "would ordinarily be expected to try them all in one judicial proceeding." *Id.* §1588 (citing *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725-26 (1966)).

b. Holding that a state court lacks jurisdiction in even these narrow circumstances would also be

bizarre, because the Due Process Clause plainly permits plaintiffs to accomplish the same result in a fashion substantially less fair to defendants and more burdensome for the judiciary.

Petitioner's causation test notwithstanding, it is settled that due process permits plaintiffs like respondents to take advantage of a judgment issued by a forum in favor of in-forum plaintiffs under the doctrine of non-mutual offensive collateral estoppel. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322 (1979). In this case, for example, if respondents do not litigate their claims in California, their own home-state courts can give them the preclusion benefit of a California judgment against petitioner on the in-state plaintiffs' claims. *See id.* at 326-30. From a practical standpoint, that means the first court's adjudicative power includes rendering decisions enforceable against the respondents' closely related claims—exactly what respondents seek from the California court here.

Petitioner's test would therefore create an absurd anomaly, in addition to a wasteful multiplication of judicial proceedings. The non-resident plaintiffs could preclusively rely on a favorable judgment from the first forum state. *Id.* But because they are not parties, the defendant cannot invoke preclusion against them. *Blonder-Tongue*, 402 U.S. at 329. All the while, the defendant of course bears the cost of defending all the proceedings in additional states around the country, while both state and federal courts are subjected to a seriatim waste of resources. *See, e.g.*, *Parklane*, 439 U.S. at 330 (preferring joinder to estoppel precisely because the latter "will

likely increase rather than decrease the total amount of litigation, since potential plaintiffs will have everything to gain and nothing to lose by not intervening"); *Keeton*, 465 U.S. at 777 (noting potential for harassment of defendant with serial cases).

c. Relatedly, petitioner's cramped view of the power of state courts is fundamentally ahistorical and promotes a form of "federalism" no constitutional drafter would have recognized. From the Founding through Reconstruction (and at least until *International Shoe*), it was within the power of states to make corporations amenable to process for all causes of action within a given state by requiring appointment of an agent. *See, e.g.*, *The Lafayette Ins. Co. v. French*, 59 U.S. 404, 408 (1855). State courts also had the power to adjudicate claims against non-resident defendants to the extent of any property held within the State. *See, e.g.*, *Pennoyer*, 95 U.S. at 722-24. The Constitution did not create inferior federal courts; it was expected that state courts would entertain *all* manner of suits, including cases among citizens of multiple states. *See* U.S. Const. art. III §1; Judiciary Act of 1789, §11, 1 Stat. 73, 78-79 (creating *concurrent* diversity jurisdiction). State courts did have tightly cabined geographical reach for their process—as did the federal courts when Congress created them, *id.* §11—but the states retained authority to subject all persons and property within the state to their jurisdiction—including *especially* any corporation wishing to do business therein. *See, e.g.*, *Paul v. Virginia*, 75 U.S. 168, 181-83 (1868); *Burnham*, 495 U.S. at 612-20 (discussing

pre-*International Shoe* approach); Br. of Prof. Stephen Sachs, *BNSF Railway Co. v. Tyrrell*, No. 16-405, at 6-8 (discussing original understanding of corporate amenability to suit, and collecting cases).

In substituting *International Shoe*'s regime for these more technical, territorial conceptions of state adjudicatory authority, this Court displaced some of the states' traditional sovereign powers over property within the state and corporations doing business there—a reasonable consequence of the more-adaptable, specific-jurisdiction-based approach. *See, e.g.*, *Goodyear*, 564 U.S. at 923-25; *Shaffer*, 433 U.S. at 207-12 (holding that, after *International Shoe*, property in a State must be related to cause of action for *in rem* jurisdiction); *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 445 (1952) (doubting continuing relevance of in-state agent for receiving process). But at no point were the states' adjudicatory powers limited to claims where the harm at issue arose from the defendant's in-state conduct. In fact, at the very time the Fourteenth Amendment was enacted, *many* states had statutes expressly defining how their statutes of limitation would apply to suits *by* non-residents, *against* non-residents, that *arose outside* the forum. *See, e.g.*, *Can. N. Ry. Co. v. Eggen*, 252 U.S. 553, 560 (1920).

Indeed, petitioner's proposed limitation would require state courts to shut their doors to citizens of other states asking to proceed against a defendant's property within that state, or to join a case in which the defendant was already properly before that state's courts respecting the same conduct. That would be an affront to federalism (and the Privileges

and Immunities Clause), not a celebration. *See, e.g.*, *id.* at 562 (the Privileges and Immunities Clause protects "'the right of a citizen of one state ... to institute and maintain actions of any kind in the courts of' another").

At bottom, petitioner's conception of federalism is one where, because this case involves multi-state claims, it implicitly lies outside the power of individual states under something like the dormant commerce clause (or, perhaps, dormant Article III). *See, e.g.*, Br. 17 n.4, 51 (preserving possibility that federal courts could handle such multi-state cases). It is also an even-more-aggressive version of using the Due Process Clause as an atextual and ahistorical limit on the power of sovereign states to increase the liability of a defendant properly before it on account of related, out-of-forum conduct. *See BMW of N. Am. v. Gore*, 517 U.S. 559, 602-03 (1996) (Scalia, J., joined by Thomas, J., dissenting). For those deeply concerned with original meaning, adjudicatory powers exercised by the states, as of the Fourteenth Amendment's ratification, over corporations that chose to do business therein, cannot be abrogated by petitioner's novel re-reading of the Due Process Clause. What petitioner really wants is to thread the needle to a newfound corporate immunity inconsistent with *both* the traditional

approach to personal jurisdiction and the modern one.[7] That project should not be obliged.

4. To repeat, none of the foregoing suggests that a state's specific jurisdiction attaches to every case aggregating nationwide claims of injury arising from conduct directed, in part, into the state. Far from it. Even when the litigation has the required "connection" to the defendant's forum contacts, courts must consider the multi-state nature of the claims and associated state interests, among other factors, in determining whether personal jurisdiction over the litigation in a forum is fair and reasonable. *Keeton*, 465 U.S. at 775; *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980). This inquiry includes "the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several

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[7] If the Court will not preserve the flexible "relatedness" inquiry that prompted *International Shoe*'s due process innovation, it should instead overrule *International Shoe* and its progeny (like *Shaffer*) to the extent they purport to derive *any* non-*traditional* limits on personal jurisdiction from the Due Process Clause. Otherwise, states will be deprived in fact of jurisdiction they held at the Fourteenth Amendment's enactment—although, remarkably, *only* in the case of corporate defendants. *See Burnham*, 495 U.S. at 621 (preserving general jurisdiction against *individuals* served while passing through on unrelated matters).

States in furthering fundamental social policies." *Burger King*, 471 U.S. at 477.

This reasonableness inquiry will often foreclose a group of plaintiffs from complaining about common, nationwide conduct in any court they choose. If—as in the nightmares of petitioner's *amici*, but unlike here—very few of the plaintiffs are from that forum, or there is no in-forum defendant, or taking discovery there is unusually burdensome, or that court's procedures for some reason unfairly disfavor the defendant, personal jurisdiction may not lie over the case.

Even when it does, other tools are available to alleviate possible unfairness. *See Burger King*, 471 U.S. at 483-84. A forum that *can* exercise specific personal jurisdiction over a multi-state case against the defendant need not always do so. For example, it can, and sometimes must, transfer the case to another venue with a superior connection to the litigation under either general venue considerations or *forum non conveniens*. *See, e.g.*, *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981).

Finally, because cases like these involve interstate commerce, there is Congress's power to regulate how they can be tried, including by expanding removal. *See supra* at 7-8 (discussing CAFA and mass-accident provision). And Congress is right now considering even further amendments along these lines to the rules governing complex litigation in federal court, Fairness in Class Action Litigation Act of 2017, H.R. 985, 115th Cong., showing that the prospect of legislative intervention

is not merely theoretical. This provides yet another, critical reason to reject petitioner's proposed constitutional rule: If problems remain under the existing regime, Congress can fix them; if this Court constitutionalizes a new paradigm of specific personal jurisdiction, Congress cannot.

II. Adopting Petitioner's Novel Causation Requirement Would Multiply Litigation, Disrespect Federalism, And Substantially Disrupt The Operations Of State And Federal Courts.

A ruling by this Court accepting petitioner's argument would substantially disrupt the operations of the state courts, and likely the federal courts as well. It would significantly increase the amount of litigation—causing cases that previously proceeded together efficiently to be adjudicated separately in courts around the nation, while also generating more collateral litigation about claim and issue preclusion. Enormous segments of complex civil litigation will be open to attack, and potentially unsalvageable. The Due Process Clause has never before been read to require such disruptive results.

1. Start with the state court cases most like this one. Although petitioner never acknowledges it, its bottom-line position is that the Due Process Clause almost always prohibits a court from asserting specific jurisdiction over the claims of non-forum plaintiffs against non-forum defendants. Br. 50. That is a radical contraction in the jurisdiction of the state courts over multi-state claims (like *Keeton*) and multi-state class actions (like *Shutts*). State courts

have been adjudicating such cases with this Court's approval since *Shutts* was decided; in fact, the California Supreme Court pointed to a 20-year history of such cases in its courts—a history petitioner was "on notice" about when it chose to direct its nationwide conduct into California. *See* Pet. App. 33a (collecting cases); *compare Keeton*, 465 U.S. at 780 (flagging constructive notice of possibility of multi-state claims under New Hampshire law).

Petitioner's argument would not merely shift complex state-court litigation from one state court to the defendant's home state, where it would be subject to general jurisdiction. Often, it would make that litigation impossible. Such suits frequently involve multiple defendants that do not share a home forum. Under petitioner's rule, no state court could fully and efficiently adjudicate such litigation. Rather than jointly litigating their claims challenging the identical wrongful conduct in one state court, the plaintiffs must proceed before fifty, or perhaps bring the same exact joint case against two different defendants in two courts simultaneously on opposite sides of the country. The result of such a rule will often be inconsistent judgments on identical legal questions, creating far greater difficulties for defendants, plaintiffs, and the judicial system as a whole than would arise from litigating the claims together. *See* Pet. App. 32a-35a.

What would happen, for example, if McKesson loses in California and is adjudicated jointly and severally liable for all the plaintiffs' injuries, while petitioner prevails against the same plaintiffs in New Jersey? Can McKesson sue for contribution in

California? Can it sue for contribution anywhere given the New Jersey judgment? If respondents are cleaved off, and subsequently sue both McKesson and petitioner in their home states, is McKesson already on the hook for *all* the damages? These issues are all intimately related to the same controversy. It serves no one's interests to force their inefficient and disjointed litigation in multiple forums—save, perhaps, petitioner's "candid" interest in making it as hard as possible to seek relief. *See supra* at 8.

Petitioner's argument would also create grave doubts surrounding historic state-court powers, like the authority to probate an estate by resolving all claims against it. This Court has long recognized "the power of a State to make the whole administration of the estate a single proceeding," and thus to determine issues connected to the administration that are not causally related to the forum. *N.Y. Life Ins. Co. v. Dunlevy*, 241 U.S. 518 (1916).[8] The constraint, of course, is that a "relatedness" inquiry applies, and does not permit the state court to thereby resolve "plainly collateral" disputes. *Id.* at 518-19. Petitioner's approach may well render this whole paradigm unconstitutional,

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[8] This probate-court power derived from *in rem* jurisdiction over estate property. But because *Shaffer* subjects the *in rem* power to *International Shoe*'s minimum-contacts inquiry, *supra* at 34, a causal test for that inquiry will make the probate court's power much more problematic.

subjecting the determination of complex estates to endless collateral attack.

2. Petitioner obliquely suggests that its position will not be so calamitous because federal courts might pick up the multistate slack. Br. 50-51. There are at least three key problems with relying on this emergency parachute to take petitioner's proposed leap.

First, as a practical matter, this often just won't happen, as the Solicitor General acknowledges (at 32). Non-diversity or amounts in controversy frequently deprive federal courts of subject-matter jurisdiction over tort suits. Moreover, the district courts rely in such cases on their home states' long-arm statutes—which typically extend to the same due process limit—for their personal jurisdiction. *See* FED. R. CIV. P. 4(k)(1)(A). The same multiplication of litigation thus inevitably results; the federal courts will have no more power to hold these cases together than their state-court counterparts. That seemingly includes even the most obviously appropriate class actions brought under Rule 23.[9]

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[9] Lacking courage in the face of its own reasoning, the government suggests its causation "rule" could give way to, at least, a federal-court exception, Br. 31 n.4, a class-action exception, *id.* 32 n.5, and a super-special-statute exception, *id.* 33 n.6. This kind of "bestiary of *ad hoc* tests and *ad hoc* exceptions," *Comptroller v. Wynne*, 135 S. Ct. 1787, 1809 (2015) (Scalia, J. dissenting), will surely overwhelm the lower courts,

Second, as a theoretical matter, this is not a sensible basis on which to allocate state-court authority. As noted, the Constitution does not presuppose the existence of *any* federal court with original jurisdiction over such cases; the general design of "Our Federalism" is for federal courts to respect and avoid interference with state-court adjudication, *Younger v. Harris*, 401 U.S. 37, 44 (1971), not presumptively preempt it by their mere existence. Moreover, it is evident from the fact that these are common-law cases that there is no difference between state-court and federal-court adjudication here: *Neither* will assert any prescriptive powers of its associated sovereign; both simply provide a forum for the adjudication of claims potentially governed by another sovereign's laws.

Third, and perhaps most important, there isn't any textual basis to distinguish between the state and federal courts in this regard. To treat them differently requires believing that the *identical* words in the Fifth and Fourteenth Amendments mean different things. Petitioner reduces this critical issue to a footnote, in which it declines even to endorse the federal power on which it relies or provide the Court with any guidance on how the question should be assessed. *See* Br. 17 n.4. This Court has not otherwise applied different constraints against the

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and it speaks volumes about the doctrinal soundness of petitioner's rule.

state and federal governments in parallel circumstances; both are surely required to provide equivalent "process" when depriving individuals of their liberty or property.

Petitioner's own argument very strongly suggests that its rule applies equally to the federal courts, which would be subject to the identical constraints on multi-state litigation as the state courts—at least in state-law cases like these. Much of petitioner's argument rests on unfairness that arises from geography, without regard to the sovereign that created the court. For example, petitioner contends that other forums are unpredictable, both in the locations it may have to travel, and the choice-of-law rules that may apply. Br. 29. But such arguments apply equally to both San Francisco courthouses: the California Superior Court and Northern District of California are a ten-minute walk apart, and apply the same choice-of-law rules to common-law tort cases. *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941). Petitioner's argument would thus categorically preclude subjecting the defendant to suit outside the confines of either its own home state (where it is subject to general jurisdiction) or the state in which the injury allegedly occurred (where alone it is subject to specific jurisdiction). Federal courts in other states are closed too.

That reasoning, in turn, would render unconstitutional federal multi-state class actions and the entire federal multidistrict litigation scheme. *See* 28 U.S.C. §1407. The MDL court can render pre-trial judgment for either side, but has no causative connection at all to many plaintiffs' claims (including,

especially, state-law claims). It might also invalidate a huge swath of federal bankruptcy practice, which centralizes claims (including state-law claims) against the estate in a single forum given nationwide personal jurisdiction. *See* FED. R. BANKR. P. 7004(f). It would also endanger the jurisdictional provisions of multiple federal statutes providing for nationwide jurisdiction to facilitate multi-state claims or class actions. *See, e.g.*, Wright & Miller, §1118 & nn.5-8 (collecting major statutes). Indeed, in cases involving foreign defendants that engage in illegal activity abroad that harms U.S. citizens (such as international terrorism and price fixing), there may be *no* court with jurisdiction to decide the kind of joint case that provides the sole pathway to effective relief. *See Keeton*, 465 U.S. at 778-79.[10]

3. It gets worse. Petitioner's entire claim-by-claim analytic framework for assessing a court's "lawful authority" is inconsistent with a host of critical precedents that allow litigation to be simplified by joining claims together. Ironically, some of these are invoked by the Solicitor General (at 30-31) as salutary examples of how Congress has provided "a single, efficient federal forum for particular classes of claims," even though these

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[10] The Anti-Terrorism Act is particularly problematic under petitioner's test. *See* 18 U.S.C. §2334(a)-(b) (allowing personal jurisdiction wherever "defendant resides, *is found, or has an agent,*" even for acts *not* within "special maritime or territorial jurisdiction" of the sovereign (emphasis added)).

multi-claim, case-management options are irremediably undermined by petitioner's argument.

Start with CAFA and 28 U.S.C. §1369, both of which purport to allow federal jurisdiction in "minimal diversity" cases. Analyzed on a plaintiff-by-plaintiff or claim-by-claim basis, these statutes are unconstitutional: A federal court has no lawful authority over a non-diverse plaintiff's state-law "claim." U.S. Const. art. III §2. Put otherwise, from their individual standpoint, non-diverse parties are subjected to the power of a court that has no independent authority over them, even though "[d]ue process protects [a party's] right to be subject only to lawful authority." *Nicastro*, 564 U.S. at 887. The answer that such a party can be subjected to the court's broader authority over the entire litigation is, of course, an answer that decides this case against petitioner.

The same relatedness inquiry that governs these minimum diversity statutes governs numerous other circumstances in which federal courts extend their adjudicatory power over claims they could not independently reach. That includes ordinary "supplemental" jurisdiction, *see Gibbs*, 383 U.S. at 725-26; 28 U.S.C. §1367, and "party-pendent jurisdiction," which allows a federal court to add related claims by third parties to federal cases, even if those parties' *only* claims are otherwise outside its reach. *See Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 557-66 (2005). For each of these doctrines of adjudicatory authority, it is accepted that the courts' lawful power extends to claims that arise from the same "common nucleus of operative fact."

Gibbs, 383 U.S. at 725; *see also Allapattah*, 545 U.S. at 557-66. And it is thus unsurprising that similar formulations can be found in this Court's articulations of the relatedness prong of specific personal jurisdiction. *See supra* at 18-20; *Rush v. Savchuk*, 444 U.S. 320, 329 (1980) ("The insurance policy is not the subject matter of the case, however, nor is it related to the *operative facts* of the negligence action." (emphasis added)).

Indeed, the bulk of the federal courts (and the leading treatise) have approved an explicit doctrine of "pendent personal jurisdiction," which permits district courts to reach claims over which they otherwise lack *personal* jurisdiction because they are properly part of a case they do have the lawful authority to adjudicate against the defendant. *See* Wright & Miller, §1069.7 (collecting cases). That doctrine fully resolves a case like this one, and conversely, petitioner's bright-line rule necessarily scuttles this fair and efficiency-enhancing doctrine, while also threatening to raise intractable problems for all the doctrines above. Rather than ask, as *Goodyear* puts it, whether the "issues" the court is asked to decide "deriv[e] from, or [are] connected with, the very controversy that establishes jurisdiction," 564 U.S. at 919, the courts will be forced to determine for each claim whether it has an independent causal connection to defendants' forum contacts. If they find that it does not, their power over the entire case suddenly disappears.

* * * * *

All these radical consequences are only the tip of the iceberg. Changing the fundamental rules that empower courts to resolve complex, multi-party litigation will likely lead to many more unforeseen complications and harms as blindsided state trial, probate, and family-law courts struggle to sort out the consequences of disturbing settled expectations about how their cases can be handled. Simply put, causation has never been understood as a bright-line rule governing when related, individual claims may be aggregated into a single case and adjudicated together by a forum that possesses the necessary connection to the overall controversy. And, again, adopting that as a new *constitutional* rule will not only cause serious and unforeseen problems, but make them impossible for even Congress to fix.

III. Under The Correct Due Process Standard, The California Courts Have Specific Jurisdiction Over Respondents' Claims.

Petitioner does not dispute that unless this Court adopts its novel causation requirement, the California courts properly exercised specific jurisdiction. Accordingly, respondents only briefly address the application of the correct test.

A. The Litigation "Arises From Or Relates To" Contacts Petitioner Itself Created With California.

1. At the outset, there is no question that petitioner intentionally directed its uniform, nationwide Plavix-related conduct into California.

Petitioner does not dispute this question, *see supra* at 10-11, but in any event, *Keeton* shows that it is indisputable. In its own words, petitioner "marketed, promoted, and sold Plavix as part of a nationwide course of conduct," that it "implemented" in "various States across the country—including California." Br. 48 (quoting Pet. App. 29a-30a). Part of that implementation involved directing some *180 million pills*—at about $4 each—into California. *Keeton* held it "unquestionable" that Hustler's nationwide, defamatory conduct had the requisite connection to New Hampshire because Hustler circulated, at most, 75,000 defamatory magazines there over five months. 465 U.S. at 774. This issue is, accordingly, five orders of magnitude easier than "unquestionable."

2. Under a correct understanding of the relatedness inquiry, *Keeton* also shows that respondents' claims have the requisite "connection" with these intentionally created contacts. In *Keeton*, this Court evaluated the "contacts among respondent, New Hampshire, and th[e] *multistate libel action*," *id.* at 778 (emphasis added), and held that specific jurisdiction was appropriate in New Hampshire regarding injuries caused by the magazine's nationwide circulation. The Court's closing summary highlighted the two key facts—that Hustler "produce[d] a national publication aimed at a nationwide audience," and that it "continuously and deliberately exploited the New Hampshire market" for that national product. *Id.* at 781. This made it an appropriate place to raise nationwide claims about "the very activity being conducted, *in part*, in New Hampshire," although its New Hampshire

connections were not "so substantial as to support jurisdiction over a cause of action *unrelated to* those activities." *Id.* at 779-80 (emphasis added).

So too here. Petitioner's uniform, nationwide Plavix-related design, labeling, and marketing practices—directed "in part" into California—gave rise to respondents' claims along with those of the resident plaintiffs. Petitioner has never suggested, for example, that it engaged in *any* distinct marketing of Plavix in California, likely because federal regulation demands uniformity. U.S. Br. 24 n.3. And just as Hustler was aware of the "single publication rule" subjecting it to nationwide damages claims in New Hampshire, petitioner was aware here that it might be subjected to nationwide damages claims in California. *See* Pet. App. 33a (collecting California precedents).[11]

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[11] For understandable reasons, *Keeton* placed no weight on the fact that the litigation involved only one plaintiff. 465 U.S. at 780-81. The State's adjudicatory authority attaches to the defendant's *conduct*, not the plaintiff's identity. *Nicastro*, 564 U.S. at 882-84. In turn, whether the defendant may be fairly haled into a forum bears little relation to whether it faces claims by one person or several. In either case, the defendant must hire counsel, travel to the forum, and discover and litigate about the same facts, on pain of a default judgment in the same amount. At most, the *relative* number of plaintiffs from different states relates to the "reasonableness" inquiry—a point the California Supreme Court itself acknowledged, Pet. App. 35a-36a—but that question is conceded here.

The presence of a defendant like McKesson also makes this case dramatically different from others because McKesson is subject to general jurisdiction in California. While "[t]he requirements of *International Shoe* ... must be met as to each defendant," *Rush*, 444 U.S. at 332 (quoted at Br. 49), "[n]aturally, the parties' relationships with each other may be significant in evaluating their ties to the forum." *Id.* Here, *petitioner itself* decided to contract with McKesson to distribute billions of dollars in Plavix in both California *and other states*. The complaints allege that petitioner and McKesson were "co-conspirator[s]," J.A. 23, who together caused Plavix to be placed "into the stream of commerce .... in a defective and unreasonably dangerous condition." *Id.* 48. Discovery has revealed that McKesson sold astronomical amounts of Plavix around the country: over 700,000 pills *in one week* in 2008. Among other things, that means petitioner would have foreseen the possibility of claims against it by non-California residents in California, even under its own causal test.

As discussed, the identity of the residents' and non-residents' claims also plays an important role here, because it shows that they belong in one controversy or litigation. *See supra* at 6. "When a controversy is related to or 'arises out of' a defendant's contacts with the forum, the Court has said that a 'relationship among the defendant, the forum, and *the litigation*' is the essential foundation of *in personam* jurisdiction." *Helicopteros*, 466 U.S. at 414. Importantly, all the plaintiffs in the litigation bring the same claims based on the same operative

facts. The non-residents' suits thus add no legal theories or discovery burdens, and leave untouched the scope of the state court's conceded jurisdiction over the residents' claims and petitioner's operative conduct. The overall shape of "the litigation" remains the same, and it is a litigation where the common "suit-related conduct" concededly "create[d] a substantial connection with the forum State." *Walden*, 134 S. Ct. at 1121.

If the plaintiffs' claims were differently structured, the minimum-contacts outcome would change. In particular, if petitioner marketed Plavix differently in different forums, respondents' claims would lack the intimate connection—through the same common nucleus of operative facts—that makes it appropriate for a court with personal jurisdiction to decide these claims together in a single case. But that can't be disputed here: After all, petitioner's initial complaint was that all these claims were *so intimately connected* that the federal courts should involuntarily merge them and take jurisdiction over the entire litigation under CAFA. *See supra* at 7-8.

Importantly, the foregoing shows that the requirements of due process cannot be evaded by a non-resident plaintiff artfully pleading that her complaint generically challenges the "nationwide marketing" of a product. *Contra* Br. 27 (suggesting jurisdiction will be available everywhere merely because plaintiffs say a product "looks just the same" in every state). The plaintiff has the "burden of establishing the trial court's jurisdiction," and the power of the court to decide her case. *Cardinal Chem. Co. v. Morton Int'l, Inc.*, 508 U.S. 83, 98

(1993). As with class-action allegations, courts must scrutinize the suggestion that the plaintiffs' claims are closely related and arise from common conduct directed, in part, into the forum state. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350-52 (2011). And, helpfully, this will mirror the careful analysis already required to decide whether individual claims belong in one case for purposes of joinder, amendment, supplemental jurisdiction, *res judicata*, and the like. *Supra* at 31.

B. Personal Jurisdiction In California Is Fair And Reasonable.

From the standpoint of "traditional notions of fair play and substantial justice," collecting these claims in one case is also straightforward. There is no question that they arise from a common core of uniform, nationwide conduct, as petitioner has conceded at various points. Meanwhile, petitioner has never even attempted to describe any prejudice resulting from aggregating the claims against it in California, except in the twisted sense that it hopes, otherwise, these claims might not be brought at all. In fact, it conceded that jurisdiction over this litigation in California was fair and reasonable if the minimum-contacts side of the inquiry was met. *See supra* at 10-11. Thus, while petitioner derides the decision to sue in California as "tactical," Br. 31, it has at no point identified even one aspect of California procedure that is unfair to it, or one respect in which the overlapping interests of other states cannot be accommodated through choice-of-law

rules or other "means short of finding jurisdiction unreasonable." *Burger King*, 471 U.S. at 478.

It is also obvious that it would cause no procedural unfairness to petitioner for the California courts to decide respondents' claims in this litigation. No matter whether respondents' own claims go forward, petitioner must litigate the same issues against the California residents, producing the same evidence and witnesses, trying the same core facts, and addressing the same core legal questions. Apart from making atomized claims too difficult or expensive to bring, there is no conceivable reason why petitioner—having already shouldered expensive discovery in California—would prefer to go through this and every other stage of litigation again in every state. That's particularly true because, again, the rules governing non-mutual offensive collateral estoppel will tend to make joint litigation the fairer option for the petitioner. *See supra* at 32-33.

Moreover, petitioner is litigating the indistinguishable California claims solely because petitioner itself chose to project the same, identical course of conduct regarding the identical product into multiple states. Here, too, *Keeton* is dispositive. This Court made clear in *Keeton* that it was fair to subject all the nationwide claims of injury to personal jurisdiction in New Hampshire "even though only a small portion of those copies were distributed in New Hampshire." 465 U.S. at 775. That concern, while present (and accounted for) here, *see* Pet. App. 36a-44a, is at least far more attenuated: California plaintiffs represented over 13% of the claims in these complaints, *far* above New Hampshire's small share

of Hustler's nationwide circulation.[12] Pet. App. 2a; *Keeton*, 465 U.S. at 775. Moreover, the Court deemed nationwide jurisdiction fair in *Keeton* even though it might have allowed the plaintiff to circumvent every other state's shorter statute of limitations—a concern that is absent here. *Id.* at 778-79.

To be sure, these are *real* concerns: Asserting personal jurisdiction over a case aggregating multi-state claims will often not be fair and reasonable based on case-specific circumstances. This would—quite appropriately—be a different case if it involved only a handful of California plaintiffs and hundreds from Texas or Tennessee. *Contra* Chamber of Commerce Br. 24-26. The key point is simply that, as the California Supreme Court recognized, it is the *reasonableness* inquiry that appropriately filters out such cases. Petitioner's argument depends on ignoring the work that inquiry does in order to cram

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[12] Petitioner's 1.1% statistic (at 7) is not forthright. As the court noted below, Pet. App. 5a, this compares nationwide revenue *for all products* to *Plavix-only* revenue in California. It also refers to the 12-month period ending in July 2012, *id.*, which includes several months after Plavix went off patent—leading to a massive drop (96%!) in petitioner's Plavix revenue. *See* Tracy Staton, *BMS Results Crater on 96% Drop in Plavix Sales*, FIERCEPHARMA.COM (Oct. 24, 2012), http://www.fiercepharma.com/financials/bms-results-crater-on-96-drop-plavix-sales. It is thus hardly surprising (or helpful to know) that California Plavix sales constituted a relatively small percentage of petitioner's total revenues over that (perhaps carefully chosen) period.

concerns about unreasonable exercises of jurisdiction into the justification for a bright-line, causal *relatedness* rule. *See* Pet. App. 35a-36a.

Less directly but still relevant from a fairness perspective, petitioner conducts very substantial operations in California. It has not only registered to do business there but also has hundreds of employees, many working to develop other drugs sold nationwide. Pet. App. 5a. Accordingly, petitioner would have foreseen California as a venue for multistate pharmaceutical claims, even under petitioner's own causal test, and would have expected to litigate frequently in California in general.

It is also noteworthy that petitioner's multiple California offices represent a huge amount of valuable in-state property; under "*traditional notions* of fair play and substantial justice," *see Burnham*, 495 U.S. at 616-22 (emphasis added), that property would easily have sufficed for satisfaction of respondents' claims through California's *in rem* jurisdiction. To be sure, doing such substantial in-state business cannot alter the minimum *relatedness* required for specific personal jurisdiction, *see supra* at 14-15 (critiquing this possible reading of the sliding-scale standard), but it can certainly render exercises of personal jurisdiction more reasonable overall.

The Due Process Clause also accounts for the weighty interests of the State in providing an adjudicatory forum, and here—as the California Supreme Court explained—the State has several significant interests in allowing its courts to decide

this joint case. As in *Keeton*, it seeks to collaborate with other states in the efficient resolution of suits regarding the same conduct that would otherwise be litigated in thirty different jurisdictions, wasting resources and risking inconsistent verdicts. Pet. App. 39a-41a. Moreover, as the California Supreme Court carefully explained, the injuries of the out-of-state plaintiffs are themselves important in correctly adjudicating the claims of the in-state plaintiffs, as they are highly probative evidence of these injuries' common cause. *Id.* 39a.

California also has a cognizable interest in ensuring the complete adjudication of claims arising from the wrongful conduct alleged by the residents' complaints—including the non-resident plaintiffs'. As a matter of basic tort principles, California seeks to ensure that petitioner internalizes all the costs of the uniform nationwide conduct that harmed its residents—a goal that is undermined the more that petitioner can evade liability to residents of other states. *Cf. BMW*, 517 U.S. at 602-03 (Scalia J., joined by Thomas, J. dissenting) (explaining that a state certainly could, consistent with federalism and due process, increase a defendant's liability in a case properly before it based on the out-of-forum injuries it caused—*even if the conduct was legal there*). Spreading the costs of the litigation across a greater number of plaintiffs also reduces the costs borne by California residents, making it more likely that the State can provide them an effective forum. *See, e.g.*, *World-Wide Volkswagen*, 444 U.S. at 292 (acknowledging relevance of "the plaintiff's interest

in obtaining convenient and effective relief"); *see also Keeton*, 465 U.S. at 775-76 (same).

California has a further distinct interest in the fair and efficient disposition of claims against McKesson, a resident corporation. As discussed, petitioner would force McKesson to defend suits in every state court in which the plaintiffs reside, or force McKesson to defend joint claims against it in California—in petitioner's absence—when almost all the relevant conduct was petitioner's and almost all the relevant evidence is thus in petitioner's hands. That would substantially increase the costs of its defense and the possibility that it will be forced to chase down petitioner in yet further contribution litigation. There is no basis to read the Due Process Clause to require such an inefficient and burdensome "process" in place of one fair and efficient case.

IV. There Is No Merit To Petitioner's Remaining Arguments.

In the end, petitioner's defense of its novel, claim-by-claim causation requirement amounts to a grab bag of policy arguments and carefully extracted pieces of dicta. None of its submissions remotely justify overturning the long-settled "related to" standard.

1. Petitioner's claim that its position is supported by precedent misstates this Court's decisions. In general, its argument amounts to artfully quoting dicta about sufficient conditions to make them seem necessary, and ignoring contrary formulations of the inquiry articulated in neighboring sentences of the very cases it cites.

This starts with *International Shoe* itself. Petitioner's brief (at 16) first cites "gives rise to" language from that case in isolation. And later, petitioner spends pages (at 20-22) explaining that the broad "related to" formulation only emerges decades later. But *International Shoe* in fact formulates the operative inquiry much more broadly, foreclosing only "causes of action *unconnected with* the [corporation's] activities" in the forum, 326 U.S. at 317 (emphasis added), as petitioner eventually concedes (at 17, 21). And, of course, it is that broader language that gets embraced in every subsequent decision, permitting litigation "arising from *or related to*"—or "disputes that 'arise out of or are *connected with*'"—"the [defendant's] activities within the state." *E.g.*, *Nicastro*, 564 U.S. 881 (plurality); *see supra* at 18-20.

Petitioner's dicta hunt through *Burger King* goes even further astray. Connecting language appearing pages apart, petitioner says that, there,

> the Court said "that specific jurisdiction is proper where the litigation results from alleged injuries that 'arise out of or relate to' th[e] [defendant's] activities in the forum State. And that connection exists, the Court explained, where the litigation seeks to hold a defendant "to account *** for *consequences that arise proximately* from such activities."

Br. 18 (petitioner's alterations). But, in its own context, the "proximate[]" language petitioner quotes is actually explaining only one of "*several reasons* why a forum legitimately may exercise personal

jurisdiction over a nonresident." *Burger King*, 471 U.S. at 474 (emphasis added). The *very next sentence* explains that, "in a State where [a defendant] engages in economic activity ... it usually will not be unfair to subject him to the burdens of litigating in another forum for disputes *relating to* such activity." *Id.* (emphasis added).

Hanson gets even worse treatment. Petitioner says this Court "rejected" jurisdiction there "because the claims at issue did not 'arise[] out of an act done or transaction consummated in the forum.'" Br. 19 (quoting *Hanson v. Denckla*, 357 U.S. 235, 251 (1958)). But, in context, the quoted language is just noting the absence of a condition deemed sufficient for jurisdiction in an earlier case; petitioner is the one who smuggles in the word "because." When *Hanson* identifies the operative point in the same paragraph, it finds against jurisdiction because "this action involves the validity of an agreement that was entered *without any connection* with the forum State." 357 U.S. at 252 (emphasis added).

"One could easily go on." Br. 19. Petitioner quotes *Walden* for the proposition that, for there to be specific jurisdiction, a "suit 'must arise out of [the defendant's] contacts *** with the forum state.'" Br. 21-22 (quoting 134 S. Ct. at 1122). Of course, *Walden*'s holding had nothing to do with such a rule. When *Walden* does describe the test, it uses much broader terms: "For a State to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a substantial connection with the forum State." *Id.* at 1121. That is unmistakably true here: Petitioner's marketing of $1

billion in Plavix pills in California is clearly "suit-related" and clearly "create[d] a substantial connection" with California. Having identified *this* as the "necessary relationship," *id.* at 1122, *Walden* uses the words petitioner (mis)quotes to say that this "*relationship*"—not "suit," Br. 21—must arise out of contacts that the defendant himself creates.

Ultimately, petitioner just admits (at 20-22) that its test will treat half of the Court's consistent formulations as surplusage—excusing all "related to" language as the kind of careless "legalese" common in the courts. But while "*an* opinion" might sometimes contain a piece of unintended dictum, *see* Br. 22 (quoting *Nevada v. Hicks*, 533 U.S. 353, 372 (2001)) (emphasis added), it is unheard of to see seven decades of opinions from multiple past and present Justices—and articulating an essential jurisdictional standard—all repeat the same formulations invariably when half of them are meaningless.

2. Petitioner also contends that finding specific jurisdiction in these circumstances amounts to an assertion of general jurisdiction, negating the Court's recent ruling in *Daimler*. That is obviously incorrect. No one thinks petitioner's Plavix-related activities in California support assertions of personal jurisdiction over *unrelated* issues. For example, plaintiffs cannot include other claims regarding other pharmaceuticals never marketed in California, or concerning Plavix marketed differently in Canada, or respecting BMS's human-rights violations in South Dakota (or South America), or the like. *See Daimler*, 134 S. Ct. at 751 (California complaint concerning Mercedes-Benz's conduct in Argentina's "Dirty War"). And even if the

relatedness inquiry allows the plaintiffs to proceed jointly, they must still show that personal jurisdiction over the whole litigation is fair and reasonable in California—an inquiry general jurisdiction does not require.

3. Petitioner further argues that basic principles of personal jurisdiction foreclose this suit because it "allow[s] a State to hale a defendant into court to enforce obligations that would have been 'incurred' regardless of whether the defendant enjoyed the privileges and benefits of the forum's laws." Br. 26. That sounds like a meaningful observation, but *Keeton* shows that it is not. There, too, New Hampshire enforced obligations against defamation in 49 other states that "would have been 'incurred' regardless of whether the defendant enjoyed the privileges and benefits of [New Hampshire's] laws." *Id.* The relevant point is that petitioner's uniform national conduct *in fact* touched New Hampshire, and there violated the same obligations it violated elsewhere. *Keeton*, 465 U.S. at 780. So too here: The conduct that injured respondents in their home states is the same "very activity being conducted, in part, in California," *id.*, and it is fair and appropriate for California to adjudicate the litigation about it because petitioner's actions created a large number of California plaintiffs, resulted in massive California sales of Plavix, and embraced a multi-state distribution relationship with California defendant McKesson.

Indeed, it is important to remember that, despite petitioner's efforts to depict them as an irrelevant happenstance, these California plaintiffs, defendants,

and facts are central to personal jurisdiction. Were they absent, there might still be minimum contacts, but California jurisdiction over this litigation would not be fair and reasonable.

4. Petitioner next argues that its proximate causation rule is clearer and more administrable, as it would give defendants greater certainty regarding where their conduct may give rise to suit. Br. 27-30, 44. That is incorrect. Among other things, the "related to" standard articulated here does not expand the number of jurisdictions in which a defendant is subject to suit. Litigation like this—asserting specific jurisdiction over cases aggregating claims "related to" the common, out-of-state conduct the defendant directed "in part" into the state—will necessarily proceed only in forums in which defendants already subjected the same conduct to that court's authority. *See supra* at 48-51.

It is true that petitioner's bright-line rule creates more certain *limits* on joint suits. (Whether it is a particularly clear rule is another matter, given the famous difficulties in determining whether a cause is legally "proximate.") But any bright-line rule can claim such one-sided benefits. The inquiry would be much more "certain" if the Court returned to the regime that provided bright-line blessings of state-court jurisdiction through in-state property or registered agents. Petitioner's quarrel is with the entire edifice of *International Shoe*. It cannot claim the benefit of rejecting the more-certain jurisdictional rules that would have cut against it before that transformative decision, and then deride the flexible, specific-jurisdiction standard that justified the

change. Similarly, it is both dangerous to established state-court procedures and risks grave injustices for this Court to rebalance the rules of general jurisdiction in reliance on that same flexible, specific-jurisdiction standard, *see Daimler*, 134 S. Ct. at 758 n.10, only to pull that rug out from under the law.

5. At very bottom, petitioner's argument repeatedly veers into a territorial concern that a forum like California will reflexively apply its own law to disputes arising in other jurisdictions. But this Court has repeatedly explained that such concerns about which state's substantive law should govern a plaintiff's claims are addressed through choice-of-law rules—including their constitutional limitations—rather than rendering the adjudication unconstitutional for lack of personal jurisdiction. *See, e.g.*, *Burger King*, 471 U.S. at 481-82; *Keeton*, 465 U.S. at 778. *Shutts* is the perfect example: It "reject[ed] petitioner's jurisdictional claim, but sustain[ed] its claim regarding the choice of law," and forced the Kansas courts to apply non-forum law to the non-forum claims it nonetheless had the power to adjudicate against the non-forum defendant. *See* 472 U.S. at 799. Don't be fooled by petitioner's deliberately telescopic focus; a wider and better-designed set of doctrinal tools is readily available—from the reasonableness inquiry to *forum non conveniens* to constitutional choice-of-law rules—to ensure that defendants are treated fairly when a single forum is asked to exercise its authority over multi-state claims against it in a single, efficient suit.

Here, the sole issue is whether a fair, reasonable, and efficient form of litigation for those claims—

which petitioner plainly connected to California by directing its uniform, nationwide "suit-related conduct" into that State—must be needlessly torn apart in the name of due process. The answer is no.

CONCLUSION

For the foregoing reasons, the judgment should be affirmed.

Respectfully submitted,

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